

Appl. No. 09/446,202
Any. Docket No. 6741
Amdt. dated 11/04/2003
Reply to Office Action of 8/5/2003
Customer number 27752

REMARKS/ARGUMENTS

Claim 14 is now in the case. Claim 14 has been amended to recite the impure water (basis at page 1, last paragraph) and the usage instructions (basis Claim 22, now cancelled). These amendments add no new matter, and entry is requested.

Formal Matters

For the record, there are no formal objections or rejections outstanding.

Rejections Under 35USC103

Claims 14, 22 and 23 stand rejected under §103 over U.S. 5,498,295 in view of U.S. 4,140,639, for reasons of record at pages 2-3 of the Office Action. Claims 22 and 23 are now cancelled.

Applicants respectfully traverse the rejection on this basis, to the extent they may apply to Claim 14, as amended herewith.

Before turning to the substance of the rejections, it is respectfully submitted that the Examiner's comments regarding the usage instruction of Claim 14 (Office Action, pages 2-3) are not well founded. As discussed at page 1, last paragraph, of the specification, one problem associated with the removal of undesirable residues from foodstuffs is that the water used in such operations may, itself, be impure. Under such circumstances, a "cleansing" operation which ends with a rinse step is likely to trade one set of problems for another – a kind of "out of the frying pan, but into the fire" situation.

It is submitted that this recontamination problem is not fairly taught in the cited documents (below).

The present invention addresses this problem in two ways. First, it provides a cleaning concentrate that, even when diluted with impure water, has sufficient antimicrobial activity that the resulting solution is suitable for its intended use to rinse foodstuffs.

Second, the usage instructions provide a necessary reminder not to rinse the composition from the cleaned food, since recontamination could then occur. As disclosed at page 5, lines 1-3, of the specification, this is not intuitively obvious to the user.

Of course, the compositions, themselves, are formulated so that they can be safely ingested, even when a final water rinse step is avoided, pursuant to the instructions.

It is submitted that the usage instructions, which function together with the composition to achieve the present invention, fully meet the tests of the *Miller* and *Gulack* cases cited in the previous responsive amendment (not repeated here, for the sake of brevity).

Appl. No. 09/446,202
Atty. Docket No. 6741
Amdt. dated 11/04/2003
Reply to Office Action of 8/5/2003
Customer number 27752

While the '295 document relates to methods for cleaning produce, it is submitted that it does not teach or suggest the problems associated with the use of impure water in such cleaning processes. The same is true for the '649 document, which adds nothing to '295 in this regard.

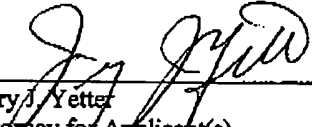
As the Examiner is aware from case law cited at MPEP 2141.02, "[A] patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified." This is part of the "subject matter as a whole" test under 35 USC 103.

Inasmuch as Applicants have identified a problem nowhere recognized in the cited documents, and have solved it by a combination of composition/usage instructions, it is submitted that Claim 14, as now amended, satisfies the requirements of §103. Reconsideration and withdrawal of the rejection on this basis are requested.

In light of the above remarks and amendments, early and favorable action in the case is respectfully requested.

Respectfully submitted,

Roselle et al.

By 
Jerry J. Yetter
Attorney for Applicant(s)
Registration No. 26,598
(513) 627-1907

November 4, 2003
Customer No. 27752